

Introduced by Senator Margett

January 31, 2005

An act to amend Section 3262 of the Civil Code, relating to works of improvement.

LEGISLATIVE COUNSEL'S DIGEST

SB 130, as introduced, Margett. Works of improvement: stop notices.

Under existing law relating to works of improvement, neither the owner nor the original contractor may waive, affect, or impair the claims and liens of other persons except by their written consent, and any term of the contract to that effect is null and void. However, a waiver and release is binding and effective to release the owner, construction lender, and surety on a payment bond from claims and liens if it follows substantially one of the forms provided by existing law, and if it is signed by the claimant, and in the case of a conditional release, if there is evidence of payment to the claimant. Existing law further provides that no oral or written statement purporting to waive, release, impair or otherwise adversely affect a claim is enforceable or creates any estoppel or impairment of a claim unless it is pursuant to a waiver and release form provided by existing law, or the claimant had actually received payment in full for the claim.

This bill would provide that nothing in the above provisions precludes a stop notice claimant from reducing or releasing a stop notice that has been served upon an owner, and any such reduction or release shall not preclude the service of a subsequent stop notice that is timely and proper.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 3262 of the Civil Code is amended to read:

3262. (a) Neither the owner nor original contractor by any term of their contract, or otherwise, shall waive, affect, or impair the claims and liens of other persons whether with or without notice except by their written consent, and any term of the contract to that effect shall be null and void. Any written consent given by any claimant pursuant to this subdivision shall be null, void, and unenforceable unless and until the claimant executes and delivers a waiver and release. Such a waiver and release shall be binding and effective to release the owner, construction lender, and surety on a payment bond from claims and liens only if the waiver and release follows substantially one of the forms set forth in this section and is signed by the claimant or his or her authorized agent, and, in the case of a conditional release, there is evidence of payment to the claimant. Evidence of payment may be by the claimant's endorsement on a single or joint payee check which has been paid by the bank upon which it was drawn or by written acknowledgment of payment given by the claimant.

(b) No oral or written statement purporting to waive, release, impair or otherwise adversely affect a claim is enforceable or creates any estoppel or impairment of a claim unless (1) it is pursuant to a waiver and release prescribed herein, or (2) the claimant had actually received payment in full for the claim. *Nothing in this section precludes a stop notice claimant from reducing or releasing a stop notice that has been served upon an owner, and any such reduction or release shall not preclude the service of a subsequent stop notice that is timely and proper.*

(c) This section does not affect the enforceability of either an accord and satisfaction regarding a bona fide dispute or any agreement made in settlement of an action pending in any court provided the accord and satisfaction or agreement and settlement make specific reference to the mechanic's lien, stop notice, or bond claims.

(d) The waiver and release given by any claimant hereunder shall be null, void, and unenforceable unless it follows substantially the following forms in the following circumstances:

(1) Where the claimant is required to execute a waiver and release in exchange for, or in order to induce the payment of, a progress payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall follow substantially the following form:

CONDITIONAL WAIVER AND RELEASE UPON PROGRESS
PAYMENT

Upon receipt by the undersigned of a check from
_____ in the sum of \$ _____
(Maker of Check) (Amount of Check)
payable to _____
(Payee or Payees of Check)

and when the check has been properly endorsed and
has been paid by the bank upon which it is drawn,
this document shall become effective to release any
mechanic's lien, stop notice, or bond right the
undersigned has on the job of

_____ located at _____ to
(Owner) (Job Description) the

following extent. This release covers a progress
payment for
labor, services, equipment, or material furnished
to

_____ through _____
(Your Customer) (Date)

only and does not cover any retentions retained
before or after the release date; extras furnished
before the release date for which payment has not
been received; extras or items furnished after the
release date. Rights based upon _____ work
performed or items furnished under a written change
order which has been fully executed by the parties
prior to the release date are covered by this

1 release unless specifically reserved by the
2 claimant in this release. This release of any
3 mechanic's lien, stop notice, or bond right shall
4 not otherwise affect the contract rights including
5 rights between parties to the contract based upon a
6 rescission, abandonment, or breach of the
7 contract, or the right of the undersigned to
8 recover compensation for furnished labor, services,
9 equipment, or material covered by this release if
10 that furnished labor, services, equipment, or
11 material was not compensated by the progress
12 payment. Before any recipient of this document
13 relies on it, said party should verify evidence of
14 payment to the undersigned.

15 Dated: _____
16 (Company Name)
17 By _____
18 (Title)
19

20 (2) Where the claimant is required to execute a waiver and
21 release in exchange for, or in order to induce payment of, a
22 progress payment and the claimant asserts in the waiver it has, in
23 fact, been paid the progress payment, the waiver and release shall
24 follow substantially the following form:

25
26 UNCONDITIONAL WAIVER AND RELEASE UPON
27 PROGRESS PAYMENT
28

29 The undersigned has been paid and has received a progress payment in the
30 sum of \$____ for labor, services, equipment, or material furnished to

31 _____ on the job of _____ located at _____
32 (Your Customer) (Owner) (Job Description)

33 and does hereby release any mechanic's lien stop notice, or bond right that the
34 undersigned has on the above referenced job to the following extent. This
35 release covers a progress payment for labor, services, equipment, or materials
36 furnished to

37 _____ through _____ only and does not cover any
38 (Your Customer) (Date)

39 retentions retained before or after the release date; extras furnished before the
40 release date for which payment has not been received ; extras or items

1 furnished after the release date. Rights based upon work performed or items
2 furnished under a written change order which has been fully executed by the
3 parties prior to the release date are covered by this release unless specifically
4 reserved by the claimant in this release. This release of any mechanic's lien,
5 stop notice, or bond right shall not otherwise affect the contract rights,
6 including rights between parties to the contract based upon a rescission,
7 abandonment, or breach of the contract, or the right of the undersigned to
8 recover compensation for furnished labor, services, equipment, or material
9 covered by this release if that furnished labor, services, equipment, or
10 material was not compensated by the progress payment.

11 Dated: _____
12 (Company Name)
13 By _____
14 (Title)

15 Each unconditional waiver in this provision shall contain the following
16 language, in at least as large a type as the largest type otherwise on the
17 document:

18 "NOTICE: THIS DOCUMENT WAIVES RIGHTS
19 UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID
20 FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS
21 ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU
22 HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A
23 CONDITIONAL RELEASE FORM."

24
25 (3) Where the claimant is required to execute a waiver and
26 release in exchange for, or in order to induce the payment of, a
27 final payment and the claimant is not, in fact, paid in exchange
28 for the waiver and release or a single payee check or joint payee
29 check is given in exchange for the waiver and release, the waiver
30 and release shall follow substantially the following form:

31
32 CONDITIONAL WAIVER AND RELEASE UPON FINAL
33 PAYMENT
34

35 Upon receipt by the undersigned of a check from
36 _____ in the sum of \$_____ payable to _____ and when the check has
37 been properly endorsed and has been paid by the bank upon which it is
38 drawn, this document shall become effective to release any mechanic's lien,
39 stop notice, or bond right the undersigned has on the job of
40

1 _____ located at _____ .
2 (Owner) (Job Description)

3 This release covers the final payment to the undersigned for all labor,
4 services, equipment, or material furnished on the job, except for disputed
5 claims for additional work in the amount of \$ _____. Before any recipient of
6 this document relies on it, the party should verify evidence of payment to the
7 undersigned.

8
9 Dated: _____
10 (Company Name)
11 By _____
12 (Title)
13
14

15 (4) Where the claimant is required to execute a waiver and
16 release in exchange for, or in order to induce payment of, a final
17 payment and the claimant asserts in the waiver it has, in fact,
18 been paid the final payment, the waiver and release shall follow
19 substantially the following form:

20
21 UNCONDITIONAL WAIVER AND RELEASE UPON FINAL
22 PAYMENT
23

24 The undersigned has been paid in full for all labor, services, equipment or
25 material furnished to

26 _____ on the job of _____
27 (Your Customer) (Owner)

28 located at _____ and does
29 (Job Description)

30 hereby waive and release any right to a mechanic's lien, stop notice, or any
31 right against a labor and material bond on the job, except for disputed claims
32 for extra work in the amount of \$ _____.

33 Dated: _____
34 (Company Name)

35 By _____
36 (Title)

37 Each unconditional waiver in this provision shall contain the following
38 language, in at least as large a type as the largest type otherwise on the
39 document:

1 “NOTICE: THIS DOCUMENT WAIVES RIGHTS
2 UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID
3 FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS
4 ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU
5 HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A
6 CONDITIONAL RELEASE FORM.”
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